FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 157/2007
(*Sau.Anusayabai Dashrath Dhage Thr.her Power of Attorney Lakhiram Shrawanji Makade* **VERSUS** *Sanjay Wasantrao Barai & another***)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Raut, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 16th July, 2007.

Heard Shri Raut, the learned counsel for the appellant.

The appellant is the original plaintiff. A suit was filed by the plaintiff for the possession of plot no.5 on which the defendant no.1 Sanjay had constructed a house. The plaintiff was the owner of a huge piece of land. A layout was sanctioned and the land owned by the plaintiff was divided into sixteen plots. It is the case of the plaintiff that the plaintiff sold plot no.9 to the defendant by a registered sale-deed dated 11.11.1994. However, it is further pleaded by the plaintiff that the defendant instead of making construction on plot no.9 made construction of a house on plot no.5. The plaintiff pleaded that the defendant had occupied plot no.5, and therefore, sought a decree for possession of the plot no.5 from the defendant.

The plaintiff also pleaded that the defendant had sold a portion of plot no.5 to the defendant no.2 and hence,

the defendant no.2 was also joined as a party to the suit.

The defendant filed written statement and denied claim of the plaintiff. It was pleaded by the defendants that though the defendant no.1 had purchased plot no.9 from the plaintiff, the Mukhtyar or agent of the plaintiff had put the defendant no.1 in possession of plot no.5. The defendant no.1 had constructed a house on plot no.5 after seeking the necessary sanction from the government authorities. The plaintiff did not object to the construction on the said plot and instituted the said suit after the construction was complete.

On the aforesaid pleadings of the parties, the parties tendered the evidence on the necessary issues framed by the trial Court. The trial Court, after considering the entire evidence produced by the parties on record, dismissed the suit filed by the plaintiff and held that the plaintiff was not entitled to recover the possession of plot no.5 from the defendant. The trial Court observed that there was ample evidence on record to show that the Mukhtyar of the plaintiff had put the defendant no.1 in possession of plot no.5 instead of plot no.9. The plaintiff also admitted in his evidence that he was aware of the construction made by the defendant on plot no.5. In view

of the aforesaid evidence and certain other evidence which was also discussed by the trial Court along with reported judgments which were considered by the trial Court, the trial Court held that the suit of the plaintiff was liable to be dismissed. The appellate Court confirmed the findings recorded by the trial Court. The appellate Court further held that the commissioner's report, which was filed on record, clearly showed that though the entire plot belonging to the plaintiff was divided into sixteen small plots, the plot holders to whom the plots were sold were not put in possession of the plots which were sold to them and were put in possession of some other plot which was not sold to them. According to the Courts, this was an additional ground for non suiting the plaintiff. In the facts and circumstances of the case, according to both the Courts, the defendant no.1 cannot be blamed for making the construction on plot no.5 instead on plot no.9. Both the Courts were justified in dismissing the suit filed by the plaintiff.

The findings recorded by both the Courts are pure findings of fact which do not give rise to any substantial question of law.

The second appeal is, therefore, dismissed with

no order as to costs.

JUDGE

APTE